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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,)	No. 11 CR 624 WHA
Plaintiff,)	UNITED STATES' SENTENCING
v.)	MEMORANDUM
RAYMOND FOAKES,)	Sentencing: January 17, 2012 at 2:00 pm
Defendant.)	

Defendant Foakes stands before this Court to be sentenced on his convictions for conspiracy to commit bank and wire fraud, wire fraud, and money laundering, in violation of Title 18 U.S.C. Sections 1349, 1343, and 1957, respectively. There is a plea agreement in this case, entered into pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C). Consistent with that agreement, the United States submits this sentencing memorandum and respectfully requests the Court impose a sentence of 70 total months imprisonment, to be followed by a 3 year term of supervised release with a special expanded search condition as detailed below.

The government agrees with the Presentence Investigation Report ("PSR") and its calculation of the adjusted offense level as 20, see PSR at ¶48, and the criminal history category

as VI, see PSR at ¶62, resulting in a Guidelines range of 70 to 87 months imprisonment. The Plea Agreement in this case provides for a low end guidelines sentence in exchange for the government's agreement to dismiss Count Twenty-Four (conspiracy to maintain a drug-involved premise). For the reasons explained below, the government believes that a sentence of 70 months is an appropriate sentence.

In sentencing the defendant, this Court must consider all of the directives set forth in 18 U.S.C. section 3553(a). *See United States v. Booker*, 543 U.S. 220 (2005). The goals of Section 3553(a) include the need:

- to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
- to afford adequate deterrence to criminal conduct;
- to protect the public from further crimes of the defendant; and
- to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

18 U.S.C. § 3553(a)(2). Section 3553(a) directs the court to consider a number of additional factors, including:

- the nature and circumstances of the offense, § 3553(a)(1);
- the history and characteristics of the defendant, § 3553(a)(1);
- the kinds of sentences available, § 3553(a)(3);
- the sentencing guideline range, § 3553(a)(4);
- pertinent Sentencing Commission policy statements, § 3553(a)(5);
- the need to avoid unwarranted sentencing disparities, § 3553(a)(6);
- the need to provide restitution to any victims of the offense, § 3553(a)(7).

The United States believes that a sentence of 70 months, followed by 3 years of supervised release with a special search condition, appropriately addresses all such considerations.

On one hand, the defendant's history and characteristics counsel in favor of a significant sentence. There is no question that the defendant has a substantial criminal history, with convictions ranging from Violent Crime In Aid of Racketeering (PSR at ¶57), to drugs (PSR at ¶56), to weapons (PSR at ¶ 52). That history is set forth in comprehensive detail in the PSR, and the government will not rehash it here. It places the defendant in the highest possible criminal history category. Although the Probation Officer correctly notes that the defendant is close to nearing classification as a "career offender," the simple fact is that but for the government's

1 promise in the Plea Agreement to dismiss Count 24 (conspiracy to maintain a drug-involved
2 premise), the defendant would have squarely been a “career offender” under the sentencing
3 guidelines had he been convicted of that offense. The time he would have been facing under
4 such a scenario could have literally been the rest of his life.

5 On the other hand, however, the court should also take into account the fact that the
6 instant crimes are non-violent and the defendant’s role in them. The instant convictions are more
7 or less white-collar crimes. Ironically, however, they will result in the longest period of
8 incarceration the defendant has served. In addition, although the defendant has no one to blame
9 for his involvement in these offenses, the defendant was not the instigator of the conspiracy at
10 issue in this case. Rather, he was one of many participants in it and his principal involvement
11 was in signing his name to documents (that others created) that he knew to be falsified.

12 Finally, and very importantly from the government’s perspective, the defendant took full
13 and early responsibility for his actions during the prosecution of this case. He pleaded guilty at a
14 very early opportunity, i.e. before the first appearance before this Court had even come, pursuant
15 to an agreement under which he would serve an important part of his life (and the lives of his
16 children) in federal prison. Although it is true that the defendant received the benefit of
17 acceptance of responsibility points for his actions in this regard, the government believes that in
18 this case the speed with which the defendant accepted responsibility demonstrates his exceptional
19 acceptance. The Court may recall that the defendant was the first defendant in this multi-
20 defendant case to plead guilty, not to merely one count, but to four counts. The defendant’s early
21 acceptance allowed the government to efficiently allocate its resources and devote more time to
22 prosecuting other individuals.

23 The government concurs with the Probation Officer that the recommended sentence is
24 significant enough but not greater than necessary to deter the defendant from committing crimes
25 in the future.

26 A 3 year term of supervised release is sought. This term is significant and will carry the
27 defendant well into his late 50s under a criminal justice sentence. Because of the defendant’s
28 criminal history, and in order to assist with his rehabilitation, the government requests that

1 consistent with the plea agreement the following special search condition be imposed as part of
2 the defendant's supervised release:

3 Special Condition (Searches)

4 The defendant shall submit his person, property, place of residence,
5 vehicle, and personal effects to search at any time of the day or night,
6 with or without a warrant, with or without probable cause, and
7 with or without reasonable suspicion, by a probation officer or any
federal, state, or local law enforcement officer. Failure to submit to
a search may be grounds for revocation. The defendant shall
warn any residents that the premises may be subject to search.

8 For all of the reasons discussed herein and consistent with the parties' agreement, the
9 government submits an appropriate sentence is 70 months imprisonment to be followed by a 3
10 year term of supervised release with a special search condition.

11 Dated: January 6, 2012

Respectfully submitted,

12 MELINDA HAAG
13 United States Attorney

14 _____/s/
15 KATHRYN R. HAUN
Assistant United States Attorney